

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT LUNA,

Plaintiff,

-against-

THE CITY OF NEW YORK, CORRECTION OFFICER LOPEZ with shield no. 18655 (first name unknown), CORRECTION OFFICER KENNETH ROASARIO with shield no. 7561, "JOHN DOE" #1-10, Individually and in their Official Capacity (the name John Doe being fictitious, as the true names are presently unknown),

Defendants.

AMENDED COMPLAINT

15 CV 06944

JURY TRIAL DEMANDED

ECF CASE

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Plaintiff ROBERT LUNA, by his attorney, GARY A. LICHTMAN, ESQ., complaining of the defendants, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1988 for violations of his civil rights, as said rights are secured by said statutes and the Constitutions of the State of New York and the United States.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1988, and the Fourth and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is founded upon 28 U.S.C. §§ 1331, 1343 and 1367

VENUE

4. Venue is properly laid in the Southern District of New York under U.S.C. §1331(b), in that this is the District in which the claim arose.

JURY DEMAND

5. Plaintiff respectfully demands a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

PARTIES

6. Plaintiff ROBERT LUNA is an African-American male and has been at all relevant times a resident of the City and State of New York.

7. Defendant THE CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. Defendant THE CITY OF NEW YORK, maintains the New York City Corrections Department, a duly authorized department of Defendant THE CITY OF NEW YORK, authorized to perform all functions of a corrections department acting under the direction and supervision of the aforementioned municipal corporation, The City of New York.

9. At all times hereinafter mentioned, Defendant CORRECTION OFFICER LOPEZ with shield no. 18655 is a duly sworn police officer of said department and was acting under the supervision of said department and according to their official duties.

10. At all times hereinafter mentioned, Defendant CORRECTION OFFICER KENNETH ROSARIO having shield no. 18655 is a duly sworn police officer of said

department and was acting under the supervision of said department and according to their official duties.

11. At all times hereinafter mentioned, "JOHN DOE" #1-#10 were duly sworn police officers and/or employees of said department and were acting under the supervision of said department and according to their official duties.

12. At all times hereinafter mentioned the defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City of New York.

13. Each and all of the acts of the defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant THE CITY OF NEW YORK.

14. Each and all of the acts of the defendants alleged herein were done by said defendants while acting in furtherance of their employment by defendant THE CITY OF NEW YORK.

FACTS

15. On or about December 17, 2014, at approximately 12:00 noon to 1:00 p.m., Plaintiff ROBERT LUNA was present AT Riker's Island, Building # C73, City and State of New York.

16. At the aforesaid time and place, defendant officers committed assault and battery upon the plaintiff without just cause.

17. The unlawful actions of the defendants caused plaintiff's jaw to be injured including a fracture that required surgery, as well as other injuries, and pain and suffering.

18. At no time on December 17, 2014 did the plaintiff act in any manner to justify defendants' unlawful actions.

19. As a result of the foregoing, Plaintiff ROBERT LUNA sustained, *inter alia*, physical injury, mental anguish, shock, fright, apprehension, embarrassment, humiliation, and deprivation of his constitutional rights.

20. The defendants prevented plaintiff's form his transfer to Edgecomb Residential Treatment Facility, where he was scheduled to attend.

CLAIM FOR RELIEF PURSUANT 42 U.S.C. § 1983

21. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "20" with the same force and effect as if fully set forth herein.

22. All of the aforementioned acts of defendants, their agents, servants and employees, were carried out under the color of state law.

23. All of the aforementioned acts deprived Plaintiff ROBERT LUNA of the rights, privileges and immunities guaranteed to citizens of the United States by the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983.

24. The acts complained of were carried out by the aforementioned individual defendants in their capacities as correction officers with all the actual and/or apparent authority attendant thereto.

25. The acts complained of were carried out by the aforementioned individual defendants in their capacities as correction officers, pursuant to the customs, usages, practices, procedures, and the rules of the City of New York and the New York City Corrections Department, all under the supervision of ranking officers of said department.

26. Defendants, collectively and individually, while acting under color of state law, engaged in conduct which constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

WHEREFORE, plaintiff respectfully requests judgment against defendants as follows:

- i. an order awarding compensatory damages in an amount to be determined at trial;
- ii. an order awarding punitive damages in an amount to be determined at trial;
- iii. reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and
- iv. directing such other and further relief as the Court may deem just and proper, together with attorneys' fees, interest, costs and disbursements of this action.

Dated: New York, New York
February 16, 2016


BY: _____
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